

REMARKS AND ELECTION OF SPECIES

The undersigned appreciates the Examiner's efforts in attempting to move this case forward by seeking an election by telephone. Regrettably, at the time the Examiner called the undersigned was unavailable.

Restriction requirement

The Office asserts, at page 2, paragraph 1 there are two distinct species:

“a) the coating method of claim 1 wherein a coating stripe is deposited over the length of the device;

b) the coating method of claim 18 wherein the application roller and the device are rotated in opposite directions.”

Applicants' election

Applicants make the election specified below.

Species “a)”

Claims 1-8, 12-15, 45, 47, 51 and 52 read on the elected species.

The election is made with traverse. Applicants traverse this restriction because the Office has not set forth reasons for why there would be burden on the Examiner if the restriction is not made. The restriction, therefore, was improperly made. *See e.g.*, MPEP §§ 803, 808.

MPEP § 808.02 states that “[w]here the inventions as claimed are shown to be independent or distinct under the criteria of MPEP § 806.05(c) - § 806.06, the examiner, in order to establish reasons for insisting upon restriction, *must* explain why there would be a serious burden on the examiner if restriction is not required” (emphasis added). Merely reciting sections of the MPEP, “and/or” boilerplate paragraphs that appear to have been drafted so that they can be inserted into any Requirement for Restriction, regardless of the


subject matter, does not satisfy the Examiner's initial burden to explain why there would be a serious burden. Since the Office's restriction requirement is not in compliance with at least MPEP § 808, the restriction requirement is traversed as being improperly made. *See* pages 2-3 of the Office Action.

CONCLUSION

Applicants do not believe that any fee is due with this response. If this is incorrect, the Commissioner is authorized to charge the amount due to Squire, Sanders & Dempsey Deposit Account No. 07-1850.

Respectfully submitted,

Date: Jan. 30, 2009
Squire, Sanders & Dempsey L.L.P.
One Maritime Plaza
Suite 300
San Francisco, CA 94111
Facsimile (415) 393-9887
Telephone (415) 954-0314


James L. Reed
Reg. No. 43,877
Attorney for Applicants